



JUST WHAT THE DOCTOR ORDERED?

CORRUPTION RISKS IN THE UKRAINIAN MILITARY'S MEDICAL SUPPLY

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ACRONYMS

ATO – Anti-terrorist operation

CMMD – Central Military Medical Directorate

MOD – Ministry of Defence of Ukraine

MMD – Military Medical Department

NAKO – The Independent Defence Anti-Corruption Committee (Nezalezhny Antikorrupciynii Komitet z pytan oborony)

NATO – The North Atlantic Treaty Organization

NSDC – National Security and Defence Council of Ukraine

SUMMARY

The health and safety of military personnel is vital to the effective functioning of the military, particularly during a period of conflict. To ensure this, an effective, well-run system of providing the military with medicines and medical equipment is needed. Corruption in this system can decrease military readiness, waste scarce resources, and is a disservice to troops that put their lives on the line.

This briefing focuses on tackling corruption and increasing the effectiveness of the medical supply system of the Ukrainian military. It aims to analyse corruption risks within medical procurement, and to provide recommendations for how to strengthen the system against these risks. This briefing note is based on an analysis of three cases, together with interviews with the employees of the Ministry of Defence (MOD), volunteers and international experts.

The research identified the following corruption risks:

- **Quality of Technical Requirements.** Technical requirements for the procurement of medical items are not always of the necessary quality or sufficiently detailed, which may influence the quality of procured goods and allow procurement contracts to favour a certain supplier.
- **Feedback Mechanism.** There is no feedback mechanism through which end-users of the products – such as military personnel and trainers—can provide input based on their experience of using the procured items, and which can then be incorporated for the improvement of the technical requirements
- **The Process of Tendering.** Our research indicated that when “lots”¹ are formed, procurement officials can manipulate the tender process by creating lots that favour a certain supplier. This can happen by, for example, including one item in a lot that only a single supplier can provide.
- **The Sanctioning of Companies.** Companies involved in corruption are not effectively sanctioned. According to Article 17 of the Public Procurement Law, the government is required to reject tenders from participants that are included on the Unified State Register of Perpetrators of Corruption or Corruption-related Offences. On the positive side, individuals that have been prosecuted for corrupt activities are put in a register, which restricts them, and the companies they represent, from participating in tenders. However, judicial corruption is a significant problem in Ukraine and can have a knock-on effect on defence procurement: ² not all participants for which there is evidence of corruption are prosecuted and placed the register, so in practice, they are able to continue taking part in tenders.
- **Decentralization of Procurement.** Although there have been benefits to the decentralization of procurement, interviewees reported that it has not precluded corruption as much as was hoped. Many of the corruption risks that occurred in a strictly centralised procurement system have been carried over into a decentralized model, but decentralisation has also made oversight more dispersed and complicated.

¹ “Lots” are the group of goods that will be purchased in a single procurement contract.

² In the 2013 Global Corruption Barometer, 87% of Ukrainians reported that they believed the judicial system to be corrupt or extremely corrupt Global Corruption Barometer, Transparency International, 2013: <http://bit.ly/2goeCLG> (Accessed May 2017).

- **Excessive Secrecy in the State Defence Order³.** The excessive secrecy in the State Defence Order prevents effective oversight of defence procurement, leaving room for manipulation. The State Defence Order is used to procure some items relevant to medical supply, such as evacuation transport vehicles.
- **Conflicts of interest.** Conflicts of interest influencing procurement decisions, or the perception that they do, may prevent potential producers from participating in bids, which results in a decreased competitiveness in the market.

NAKO recommends:

- The Military Medical Department (MMD) within the MoD should ensure that technical requirements for a procurement of medical items are of a high quality, to help assure that procured goods are appropriate for the military's needs. This should include drawing on the input of those using the supplies in the field, volunteers and civil society organisations, and other external experts.
- To make it more difficult for corrupt suppliers to participate in tenders, the MOD should take steps to sanction those that do not fulfil their contractual requirements. This should include:
 - Use guarantees of contract fulfillment, which are provided for under Article 26 Public Procurement law. The mechanism of such a guarantee is that the supplier that wins a tender is required to put a deposit into the Ministry's account. Only when the contract has been completed in full will the MOD return this money to the supplier. If the terms and conditions of the contract are violated by the supplier, the deposit is retained by the Ministry, and is transferred to the appropriate MOD budget. This mechanism can help reduce the risk of non-fulfillment of contracts, and of unreasonable price increases after the contract is concluded.
 - The MoD should make companies legally liable for failing to fulfil a contract in full and on time, in accordance with Article 549 of Ukrainian Civil Code.
- The Ukrainian government should reduce secrecy around procurement, including the State Defence Order. As a first step, the Rada should review existing legislation, guidance and practice to assess whether it is in line with NATO state standards and the Global Principles on National Security and the Right to Information (the Tshwane Principles).
- The MoD should establish a feedback mechanism to provide the opportunity for end users to report on the quality of medical supplies procured. This is necessary to obtain information from end-users (doctors, trainers, military personnel) about the quality of products.
- The MoD should introduce additional principles on the formation of lots in order to reduce the risk of manipulations at this stage. The current coding system provides some detail, but greater detail, such as structuring products according to the type of medicine being procured, should be provided.
- The MOD should develop and implement policies for reducing and regulating conflicts of interest. This should include:

³ The State Defence Order is the primary defence procurement plan, the majority of which is classified. It includes research & development, procurement of already-approved goods and services by defence agencies, repair, and the increase or creation of new defence facilities.

- Officials and officers should be prohibited from performing official work on any matter where a person, family or close relationship is liable to raise doubts about their impartiality.
- Officials and officers should be prohibited from having any financial interest or involvement in organizations relevant to their defence work.
- The MOD should develop and monitor clear guidance for officials so that they can judge whether a conflict exists. NAKO stands ready to participate in the process of the development of the main principles.
- Officials should be required to disclose potential conflicts of interest.
- A clear procedure should be in place to resolve conflicts of interest when they arise. There should be a defined chain of command, details on documentation to be completed and a timeframe within which officials are obliged to act.⁴ NAKO stands ready to assist in developing the main principles, based on international experience.
- The MOD should ensure that security assistance requests are aligned with procurement plans, so that where donors may be able to fill a capability gap – such as evacuation transport – that possibility is considered along with procurement.
- The MMD should reconsider the total decentralization of the procurement and consider introducing a mixed system of centralised and decentralised procurements.

INTRODUCTION

Since the beginning of the Russian aggression in the East of Ukraine in 2014 the military medical care system has undergone reforms that have made it more capable of providing for the troops. For example, new medical posts were introduced in the anti-terrorist operation (ATO) zone, making it easier to treat wounded soldiers⁵. The system of medical supply, however, remains largely unchanged, and remaining inefficiencies and corruption risks prevent it from performing its functions at its highest potential.

The aim of this briefing note is to highlight ways of improving the system of medical supply at the MOD. To do this, we will describe the medical supply system, highlight risks and make recommendations based on the identification of existing gaps. The note will also analyse several cases of procurement of medical supplies. The report uses media publications, official documents, and interviews, which have been conducted with experts, officers and volunteers involved in the process.

METHODOLOGY

While conducting this research NAKO used VCA methodology – Vulnerability to Corruption Assessment (known as Risk Assessment & Management in the European tradition). The VCA methodology includes 3 main steps:

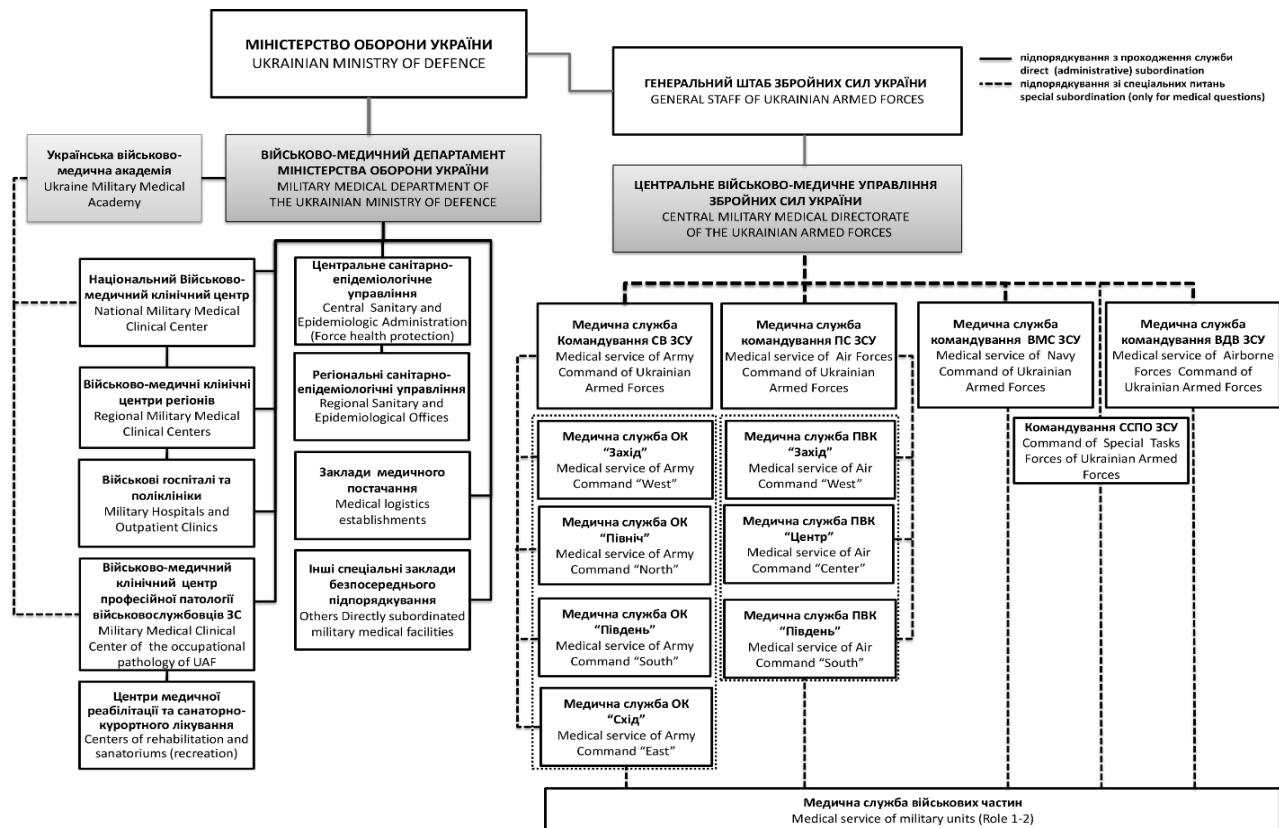
⁴ *Codes of Conduct in Defence Ministries and Armed Forces. What makes a good Code of Conduct? A multi-country study*, Transparency International UK, травень 2011: <http://bit.ly/2x28sHl> (Accessed May 2017).

⁵ Роман Туровець, *До кінця року наші підрозділи отримають 23 санітарні броньовики і 145 високопрохідних санітарних автомобілів – генерал-майор м/с Андрій Верба*, 15 квітня 2016 року: <http://bit.ly/2vldu7l> (Accessed April 2017).

- analysis of the target legal relations legal framework;
- indicating corruption and corruption risks primarily through conducting interviews with insiders and analyzing media reports;
- development of corresponding recommendations.

THE MEDICAL SUPPLY SYSTEM

At the beginning of the Russian aggression, the Ukrainian Forces' medical system existed as seen below. It was managed by the Military Medical Department (MMD) and Central Military Medical Directorate (CCMD), with the medical supply chain management subordinated to the MMD^{6,7}. This structure is in the process of being reformed, and the intention is to merge the Military Medical Department (MMD) and Central Military Medical Directorate (CCMD) into one unit⁸.



As with most large militaries, the medical system can be divided into "deployable" and "non-deployable" medicine. "Deployable medicine" is subordinate to the General Staff and to the Central Military Medical Directorate, and includes military personnel at all levels, who have military ranks and are subordinate to the General Staff. "Non-deployable medicine" is subordinate to the MMD; it provides healthcare at military hospitals that serve both military personnel and civilians. Military hospitals and clinics that provide healthcare to military personnel and their families fall into the category of institutional medicine. This sector is subordinate to the Ministry of Defence of Ukraine and is coordinated by the MMD⁹.

⁶Interview with Surgeon General Ukrainian Military Medical Service, Medical corps International forum, <http://www.mci-forum.com/interview-with-colonel-andronati-surgeon-general-ukrainian-military-medical-service/> (Accessed May 2017).

⁷ Нормативно-правова база з організації медичного забезпечення Збройних Сил України, розроблена з урахуванням стандартів НАТО: <http://bit.ly/2x24Tk7> (Accessed May 2017).

⁸ Interview 6.

⁹ «Про затвердження Положення про Військово-медичний департамент Міністерства оборони України», Наказ Міністерства оборони №331 від 29.06.2016 р.: <http://bit.ly/2wGFi0l> (Accessed May 2017).

This briefing focuses primarily on the medical supply system, which sits inside the MMD. Its role is to supply traditional medical and surgical equipment, advanced equipment such as MRI scanners, and pharmaceuticals. In theory, the medical supply system serves both the peacetime mission of health maintenance and, in times of crisis, for the operational needs of the armed forces. The system both provides soldiers and military doctors at the frontline with medicine, rehabilitation after their return from combat, preventive medical appointments, and sanatorium therapy, and for the general functioning of military hospitals and clinics¹⁰.

A properly functioning military procurement system helps to make sure that forces have what they need to fight. To do this, it needs to:

- set requirements for the capabilities, quality and quantities for arms, military equipment, and supplies;
- allocate resources based on national defense priorities;
- identify vendors;
- order and receive sufficient arms, equipment, and supplies to meet those requirements; and
- ensure that items meet agreed-upon terms for quality and quantity, and provide the best value for money possible.

In 2017, UAH 327 million (\$12.4 million USD) were allocated to the Ministry of Defence of Ukraine for the medical support, which is UAH 80 million (\$ 3 million USD) more than in 2016. About UAH 205 million (7.8 million USD) was allocated for medication, and UAH 93.5 million (3.5 million USD) for the procurement of medical equipment¹¹.

The *Strategic Defence Bulletin* – the roadmap for defence reform, including medical reform – outlines priorities based on the principles of NATO member states¹². According to the Bulletin, the aims of medical reform include:

- making the medical supply system capable of providing medical support to the defence sector;
- matching capability with NATO standards;
- increasing the capability to find, evacuate, and treat the wounded;
- introducing new medical assistance technologies and protocols;
- creating systems for treatment and rehabilitation of the wounded within the national healthcare system;
- improving training for military medical staff; and improving information flows for medical treatment¹³.

¹⁰ Ibid.

¹¹ Виступ речника Міністерства оборони України під час брифінгу в Українському кризовому медіа-центрі, 28 лютого 2017 року: <http://bit.ly/2xvIhaT> (Accessed May 2017).

¹² Strategic defence bulletin, introduced by the President's order on June 6, 2016, <http://bit.ly/2xKBI7O> (Accessed June 2017).

¹³ Strategic defence bulletin, introduced by the President's order on June 6, 2016, <http://bit.ly/2xKBI7O> (Accessed June 2017).

The Medical Supply Process

The medical supply process is complex, and includes several phases: formulating needs, appointing funds and making procurement decisions, approval by auditors, receiving, testing and issuing medical supplies, and putting material in storage.

The organization of medical supply rests upon the MMD, military medical Centres in the regions, military units, and healthcare institutions, under the responsibility of MoD. There are five regional military Medical Centres that are responsible for supplying medical goods to the military units in their territory, both by centralised and decentralised procurement.¹⁴ Centralised procurement was generally applied prior to 2017 when expensive equipment and goods were procured; they are conducted by the MOD department of procurement, after the military medical department submits a request along with technical requirements. But in 2017, almost all the procurements are being conducted on a decentralised level, so in the outline of the procurement process below, we describe how decentralised procurement is conducted.

Formulating needs

The process of medical supply starts with identifying needs, which occurs at two levels – first by the Clinical Centres, and second by the military units that are under the responsibility of the Clinical Centres in their territory. Military units send their needs to the Clinical Centres using an Application Report (formally, “Application report 8/med.”).

How Application Reports are prepared. The Application Report is the key document that sets out the needs of the Clinical Centre, and includes an inventory, which identifies the amount of medical property military units and hospitals possess¹⁵. Between the end of August and early September every year, the Director of the MMD orders Clinical Centres to make an inventory of medical property and prepare an Application Report, and send it to the Department by 25th of December. In mid-September, the Clinical Centres gather the Chiefs of Medical Services and conduct trainings on how to compose application reports. The medical services of each military unit and hospital then prepare these Application Reports, and send them to their Clinical Centres.

Each Clinical Centre composes an Application Report for itself, and also collects the Application Reports from military units of its territory. The Clinical Centre then prepares an order based on those reports, and puts it in the application report to the MMD. The Medical Supply Unit at the Pharmaceutical Centre within the Clinical Centre is responsible for this; there is also a Medical Supply Unit within each military unit.

The consolidated Application Report is signed by the Chief of the Pharmaceutical Centre and the Chief of the Clinical Centre. When it is signed, it is sent to the MMD at the MOD, which consolidates all the Application Reports from Clinical Centers.

¹⁴ «Про затвердження Порядку постачання медичного майна Збройним Силам України в мирний час», Наказ Міністра оборони України від 11.05.2017 № 261, <http://bit.ly/2vHCqMb> (Accessed June 2017).

The Clinical Centers provide their Application Forms to the MMD, which collects all the received application reports, and calculates the general need of the Military Forces for the next year. Clinical Centers also provide a note explaining how the calculations were made, and any justifications for abnormal requests or high-value equipment.

Based on the application reports received from Clinical Centres, the MMD calculates the requirements for the year ahead. The MMD can cover these needs using funds, or using goods that it already has, for example in storage.

Another key document used in defining needs is the "Form for Medicine" - the list of drugs that can be used in Military Forces of Ukraine. It is reviewed annually –the Pharmacotherapeutic Commission considers the "form for medicine" for the coming year each October, and submits it to the Director of the Department for approval. The list of available medicines is reduced for small and mid-level hospitals that provide fewer complicated treatments. Clinical Centres compose their Application Reports in line with this form. Though it is possible to buy medicines that aren't on the form, it requires individual justification.

Appointing funds and procurement decision-making

By February, the MOD knows the amount of funds available for medical supply, and the monthly allocation plans. When the amount of funds available for medical supply are known, the process moves back to the Clinical Centres, which make draft procurement plans, and send them to the Director of MMD for confirmation. When the draft is approved, the Clinical Centre can start the procurement procedure.

Procurements for the year are largely made between February and May, though some can take until the end of the year. Funds for payment are allocated on a monthly basis. Additional procurements being added throughout the year can make annual planning difficult. If additional procurement is needed, previously-agreed procurements need to be amended.

There are Tender Committees within each Clinical Centre. These Committees, which make medical procurement decisions, do not function on a constant basis, but are formed on an *ad hoc* basis, when there is a need to initiate procurement. The Head of the Tender Committees are the chiefs of the Clinical Centre (or another person appointed by his order). The members of the tender committees are the main specialists of the Clinical Centre, and may include surgeons, therapists, pharmacists, lawyers, and others.

Before the tender committee initiates a procurement process, the technical requirements are formed. Technical requirements are the description of the functions that a product must perform in order to meet a required need. The National Military Medical Clinical Centre, or "GVKG", has established a permanent commission that elaborates medical and technical requirements, evaluates medicines, medical products, and equipment, and accepts products for procurement.¹⁶ The Commission summarises the technical specifications that various manufacturers can offer, and submits it to the

¹⁶ MOD Order of 24.06.2015 № 249/4/4374.

MMD. The GVKG uses this analysis for form a baseline for technical requirements for medical products, which are included in the tender documentation.

Along with deciding what will be purchased, the tender committee is also in charge of formulating lots, or groupings of items to buy together. The tender committee formulates lots based on “CPV codes” (Common Procurement Vocabulary), which give each type of product a number, which classifies the item into a particular class. The type of product is assigned a number that classifies the product by class.¹⁷ These codes are used to group the products, but there is still some discretion allowed to the Tender Committee in how those lots are formed.

Audit Approval

There are two types of audit – territorial and central. The central audit, carried out by the Department of Internal Audit of the MoD, takes place once every two or three years. Its goal is to fully check the activities of Clinical Centres.

The territorial audit is subordinated to the Central Audit Department at the Ministry of Defense. According to an MOD order, all contracts over 50,000 UAH (1,930 USD) have to be agreed with territorial audit department before the contract is concluded ¹⁸. Once the contract is agreed by the territorial audit, it can be signed and the goods can be purchased.

Receiving, testing and issuing medical supplies

After the purchase, goods arrive and are received at the pharmacy, and are included in the inventory. The senior nurse of each medical institution, who is appointed by the head of the relevant Clinical Centre, is authorised to conduct quality control when goods arrive is appointed in each medical institution. This verification includes checking the certificates of quality, the expiration date, and a visual check to detect, for example, poor packaging.

Medicine is distributed and written off the inventory based on a system of prescriptions. Each time a prescription is filed, it is registered, and the inventory is updated monthly. Verification is also conducted by the State Medical Service Agency on an annual basis across the whole country. They check hospitals and clinics for the appropriate conduct with medicine and materials, storage conditions, etc.

Storage

Clinical Centres have separate departments of storage: departments of storage of medical products (medical products: expendable property and inventory); Department of storage of finished medicines; Drug storage department and alcohol storage department.

CORRUPTION RISKS

This research has analysed three cases to better understand the corruption risks in the medical supply system. This is not a comprehensive analysis of all potential corruption risks, but identifies three areas

¹⁷ Common procurement vocabulary ДК 021:2015: <http://bit.ly/2wg2Ub6> (Accessed June 2017).

¹⁸ MOD Order of 21.11.2014 №828.

of particular concern: setting medical and technical requirements and testing items; forming lots for procurement; and conflicts of interest.

Medical and technical requirements and testing items

The quality of procured good depends, to a large extent, on the technical requirements provided by the MMD. These requirements are submitted to procurement units within the clinical centers, which conducts the procurement process. Suppliers, when producing their products, adjust them to these requirements, and products provided by suppliers should also be evaluated according to these requirements.

One major corruption risk identified is poor quality technical medical requirements, which lack detail, or are drafted in a way that may favor some providers over others, or may just lead to procurement of poor quality goods¹⁹.

Additionally, there is no feedback mechanism to allow individuals that use medical supplies to give input on their quality to those conducting procurement. This would help assess whether items function well on the battlefield, and provide an opportunity for their input to be incorporated into technical requirements in the future²⁰.

Case 1: tourniquets procurement

The case of the procurement of tourniquets serves as an illustration of corruption risks related to technical requirements and testing. The case is described in two stages.

STAGE I. In October – November 2015 the MMD purchased 30,000 tourniquets. Interviewees for this research indicated that another company that also participated in the tender had higher quality products, but said that it could not provide the required number of items in the time allowed for the tender, so withdrew its bid²¹.

After the acquired tourniquets were received, it was discovered that they were of poor quality. This issue was particularly highlighted by the volunteers of the *Medical Committee of the Association of People's Volunteers of Ukraine*²². When volunteers conducted a test of the tourniquets informally, they found that some tourniquets failed to bear the pressure and broke²³. The specifications used to purchase the tourniquets had been unsatisfactory. Moreover, the previous tourniquet testing was not conducted in a laboratory, and did not include all technical aspects of tourniquets for use on the battlefield²⁴.

The volunteers suggested that a commission be formed, comprised of experts and doctors, to test the tourniquets supplied in October-November 2015, and develop new technical requirements for the tourniquets, in order to improve the quality of items purchased in the future. Those interviewed for this research expressed differing views of this committee. MOD personnel reported that the

¹⁹ Interview 1.

²⁰ Interview 7.

²¹ Interview 8.

²² Асоціація Народних Волонтерів України, website: <http://bit.ly/2wQAndJ> (Accessed May 2017).

²³ Interview 5.

²⁴ Interview 1.

volunteers recommended personnel who lacked the required expertise, though volunteers denied that that was the case. The MMD did not join the initiative to devise the improved specifications.

STAGE II. A new tender on tourniquets procurement was announced on 29 February 2016, but on 19 March, the Minister of Defence chose to cancel the tender for the procurement of military tourniquets and to hold a new one with higher quality standards of quality.

The Reforms Office of the Ministry of Defence of Ukraine decided to develop recommendations for a new tender in cooperation with volunteer organizations. They did this because although the technical requirements developed for the tourniquets by the suppliers themselves have to be approved by the State Administration of Ukraine on Medicines of the Ministry of Health of Ukraine, this process fails to guarantee the qualities required by the Ukrainian Armed Forces, especially during combat²⁵.

This time, several NGOs and volunteer groups participated, including National Home Front, All-Ukrainian Association "Patriot", Initiative E+, NGOs "Army SOS" and "Come Back Alive", as well as by ATO-experienced medics and tactical medical instructors. They established an expert board, which, jointly with the Ministry of Defence of Ukraine, devised the technical medical requirements, a testing methodology, and a procedure for quality control²⁶.

A detailed testing of the tourniquets was held at the Testing Centre of the National Technical University of Ukraine, Igor Sikorsky Kyiv Polytechnic Institute ("Nadiinist"). The results of the research were used for the development of the improved technical medical requirements.

On the 8th of August 2016, the procurement was cancelled. None of the domestic companies could meet the newly developed technical requirements. Later, the Director of the Medical Department took a decision to decentralize this procurement. The costs were reallocated, and 20,000 military tourniquets and 100,000 Esmarch's tourniquets were procured at the hospital level from local suppliers. These did not meet the requirements that the volunteers had drafted.

The process shows evidence of bureaucratic inertia or incompetence, and a failure to deliver the requirements troops need. Though there were no corruption allegations in this case, a number corruption risks and challenges can be identified. For example:

- There was a failure to conduct appropriate testing in the first phase;
- There was an absence of a proper feedback mechanism – it was only the volunteers that identified the problems with the tourniquets, but they had no straightforward mechanism for feeding this back to the MOD;
- It can be challenging to balance the expectations of volunteers and those involved in testing the products, with the financial resources of the Ministry.

²⁵ Міноборони скасувало закупівлю турнікетів – життя військовослужбовців дорожче, НАРОДНА АРМІЯ, 21 березня 2016 року: <http://bit.ly/2xvnZx1> (Accessed May, 2017)

²⁶ Ibid.

The formation of lots

The second corruption risk arises in the process of forming lots for procurement – in other words, forming groups of items for a call to tender. Trying to procure in a large lot can hinder competition, as often only one provider is able to produce a large number of items required, and other smaller providers are precluded from participation. Along with the size of the lot, corruption risks also arise in the process of selecting items for a lot.

A major corruption risk when forming lots for procurement is to include an item that can only be provided by one supplier – alongside other items that could, potentially, be supplied by various providers. In these cases, the entire lot can only be supplied by a single provider. Such an approach cuts out other suppliers, decreases competition, and can lead to a price increase.

The MOD started using e-procurement in July 2015. Before this, media regularly reported on manipulations that occurred in the process of forming ‘lots’ of items. And though e-procurement has helped to reduce the risk of corruption, this is one area that it hasn’t helped – it can only identify the best cost for the lot that is entered into the platform. Of course, it also makes it possible for each contract to be analysed individually – which makes it possible to identify discrepancies in lots.

Case 2: The procurement of medicine

One case related to lot formation was investigated and published on *Censor Net*. In it, the author describes in detail how medicines were purchased throughout 2014-15 in lots formed inappropriately²⁷. The process that was used includes several corruption risks that, according to interviewees, are still in place today. For example:

- 1) A person occupying an official position is appointed as a coordinator of the purchase. The coordinator leads talks with potential providers, and illegally agrees on the amount of a so-called “commission” with one supplier. They can then officially cancel the tender – citing minor technical reasons that could normally be resolved – and re-start the tender later. When they reintroduce the tender, the technical requirements will have been written specifically for the capabilities of the already-negotiated supplier.
- 2) Collusive bidding: for example, multiple suppliers collectively agree that one supplier will win the contract, and provide the ‘losing’ bidders with a portion of the contract earnings. The bidders agree on a price in advance, and also agree who will supply the lowest one – with the others receiving a payment to compensate for their “loss”. The coordinator within the MMD has to be involved in this.

In 2014, 13 tenders for medicine were cancelled because fewer than two proposals were received; only five agreements were drawn up. The *Censor Net* investigation indicates that this was because the procurement coordinator made agreements with the suppliers, as described above. As a result, the funds were not used, and military hospitals received no medications²⁸.

²⁷ Леонід Ісаков, *Маніпуляції з тендерами на ліки в Міноборони*, ЦЕНЗОР.НЕТ, 4 грудня 2014 року: <http://bit.ly/2vpJn9p> (Accessed April 2017).

²⁸ Леонід Ісаков, *Маніпуляції з тендерами на ліки в Міноборони*, ЦЕНЗОР.НЕТ, 4 грудня 2014 року: <http://bit.ly/2vpJn9p> (Accessed April 2017).

Those interviewed for this research indicated that such schemes are still going on today, though because of decentralization of procurement and usage of the Prozorro e-procurement system, there are fewer opportunities than before²⁹.

Decentralization: greater accountability, but not a silver bullet

On the one hand, decentralization allows a single responsible entity to be established in case of abuse – for example, the head of a hospital. But interviewees questioned whether 100% decentralization is the most effective way to provide medical assets. There are two primary arguments: first, with decentralized procurements, when each hospital buys stores for itself, it is difficult to store assets on a national level. In case of a national emergency, it's important to have stores that can be distributed quickly to where they're needed. Second, there are some standard materials used in every medical setting, and purchasing them in bulk will likely lead to a lower cost.

A better approach may be a mixed system. In Germany and Austria, for example, procurements at a national level are combined with decentralized procurement, which allows for medical supplies to be provided to the troops in a quick and efficient way, but also to accumulate required stocks cheaply and efficiently.¹

Whichever model is used, the principle remains the same: transparency and oversight must be in place, and there should be clarity around when procurements should take place at each level, to reduce opportunities for individuals to influence how a particular procurement is conducted.

Sources: Gulpa V, "Medical supply as a system", Military medicine of Ukraine, vol.16, no 1, 2017, pp. 14-28.

Lack of transparency & conflict of interest

The third aspect of corruption risk is the lack of transparency, which creates opportunities for corruption and manipulation. Procurements that are included in the State Defence Order – the main document setting out what Ukraine will procure for its defence forces – remain largely secret.

Along with the corruption risk that arises from a lack of transparency, this also has an impact on process: they do not have to be acquired through an open procedure, as they constitute a state secret. Because there is no clear criteria of what can be classified as a state secret, each procurement can be placed into State Defence Order – and withheld from public view. This makes it easier to manipulate a procurement procedure in favor of certain provider, and increases the risk of private interests influencing procurement decisions.

Case 3: the procurement of "Bogdan" evacuation transport

At the beginning of the Russian aggression in 2014, Russian-made utility trucks, "tabletki" (UAZ-452), were used for evacuating the wounded³⁰. The MOD requested "tabletkas" from state-

²⁹ Interview 1, 5, 6.

³⁰ Олександр Тереве́рко. Операція – санітарна евакуація, НАРОДНА АРМІЯ, 29 грудня 2016 року: <http://bit.ly/2vH7gF1> (Accessed May 2017).

owned enterprises when they needed them in the East. The state-owned enterprises provided them, but because they were very old there were no spare parts for them and they broke down quickly³¹.

To resolve the problem of providing the Armed Forces of Ukraine with evacuation transport, The MOD convened a meeting in April 2015³². One of the agenda items, as indicated in the minutes of meeting, was to determine who was capable of producing battlefield ambulances for the Armed Forces of Ukraine³³. The meeting was attended by representatives of a number of potential suppliers: "BUICK" Production Company (PC), "KRAZ Scientific and Production Company" LLC, "Diatech-Ukraine" LLC, and "Praktika" PJSC.

As a result of the meeting it was decided to create a working group aimed at developing the military operational requirements for a battlefield ambulance, using the chassis of a domestic producer. It was agreed that they would place these requirements on the websites of the Ministry of Defense of Ukraine and the Military Medical Department³⁴. The aim of the Ministry was to obtain a substitute of tabletas, which would be relatively cheap and simple to use.

The process for the MOD getting these evacuation vehicles was not through open procurement, but through the State Defence Order. The process of procuring through the State Defence Order is that the MOD or relevant government body conducts discussions with potential suppliers of an item and chooses the one with the best criteria. The State Defence Order is largely closed to the public, which makes oversight and monitoring of the negotiation and assessment difficult.

Later, on 17 January 2017 the media reported that a contract was signed between MoD and "Automobile Company "Bogdan Motors" PJSC on purchasing 100 battlefield ambulances. The approximate cost is \$32, 000 US per vehicle³⁵.

One interviewee reported that the evacuation transport "Bogdan", was included in the State Defense Order before the first test vehicle was made and tested³⁶. This would indicate that the decision to purchase "Bogdan" vehicles was made prior to the assessment and discussion with suppliers. We were not able to confirm this.

The testing of the "Bogdan" ambulance car was conducted during two weeks,³⁷ but not on ice or snow, which caused criticism by international experts³⁸. A report on the testing sent to the Deputy Minister of Defense stated that the Bogdan-2251 evacuation vehicle makes it possible to perform the tasks assigned at all types of roads and under the seasonal off-road conditions³⁹ even though

³¹ Interview 1.

³² Протокол наради від 21 квітня 2015 р, Міністерство оборони України, Військова медицина: <http://bit.ly/2xvu5NP> (Accessed May 2017).

³³ Ibid.

³⁴ Ibid.

³⁵ Армія почали купувати у «порошенківця» санітарні машини з китайськими шасі по \$32 тисячі, НАШІ ГРОШІ, 17 січня 2017 року: <http://bit.ly/2gmOeBu> (Accessed April, 2017).

³⁶ Interview 3.

³⁷ Ibid.

³⁸ Interview 2.

³⁹ Перші санітарні автомобілі Богдан-2251 надходять до Збройних Сил України, UKRAINE MILITARY PAGES, 16 січня 2017 року: <http://bit.ly/2wmq058> (Accessed May 2017).

the clearance of the vehicle is only 20 cm, which is the legal limit for vehicles qualified for off-road transport⁴⁰.

Nevertheless, on November 3, 2016, the Bogdan Corporation reported that upon completion of the qualification test, the State Research and Test Centre of the Ministry of Defense recommended the MOD to purchase the evacuation vehicle Bogdan-2251 for the Armed Forces of Ukraine⁴¹.

On March 27, 2017 the Ministry of Defense of Ukraine published an order to release the Bogdan-2251 ambulance vehicle for service⁴². On April 13, 2017, the first ten of the 100 Bogdan-2251 ambulance vehicles were transferred to representatives of the Ministry of Defense⁴³. The remainder of the contract vehicles should be produced before the end of this year. One interviewee reported that the lack of the evacuation transport of the Armed Forces of Ukraine requires 400-500 evacuation vehicles, so the number of vehicles acquired will not cover the deficit⁴⁴.

Price and technical characteristics. Both the procedures followed and the quality of the procured vehicles raise concerns.

The Bogdan 2251 vehicle is built on the chassis of the Chinese-manufactured Great Wall Wingle 5 pickup truck. According to the vehicle characteristics, its load capacity is 1000 kg⁴⁵. However, the vehicle's medical cabin (also known as a 'module') alone weighs 600 kg. This means that the vehicle can carry only 400 kg of load. Considering that the Bogdan 2251 would have to carry 6-7 persons (1 driver, 1 armed escort, 2 paramedics and 2-3 wounded), and also medical equipment, the vehicle is likely to be constantly overloaded, which would reduce the service life of the vehicle and could lead to breakdowns⁴⁶.

There are additional aspects that give cause to concern about the truck's operability: low clearance (20 cm), the absence of heating inside the vehicle⁴⁷. The vehicle's total price is 32 000 (USD), which interviewees reported is high for a vehicle on the Chinese-manufactured chassis with a simple mechanical module⁴⁸.

One interview also reported that MOD received Burtex B4731 medical evacuation vehicles through US security assistance, with 40 delivered and another 10 to be added. The interviewee stated that the MOD could have made a request to US for evacuation vehicles, and that it may have been possible that additional ambulances could be added. However, such requests were not articulated⁴⁹.

⁴⁰ Interview 4.

⁴¹ Санітарний автомобіль Богдан-2251 (4Х4) успішно пройшов випробовування та рекомендований до закупівлі міноборони України, БОГДАН КОРПОРАЦІЯ, 3 листопада 2016 року: <http://bit.ly/2wQvixT> (Accessed April 2017).

⁴² «Про допуск до експлуатації в Збройних силах України автомобіля санітарного Богдан 2251 на шасі Great Wall Wingle 5», Наказ Міністерства оборони України №180 від 27.03.2017 р.: <http://bit.ly/2wmo7Pc> (Accessed April 2017).

⁴³ Черкаський автозавод «Богдан» відправляє в зону АТО перший десяток санітарних машин, ВІЙСЬКОВА ПАНОРАМА, 13 квітня 2017 року: <http://bit.ly/2x2dO5q> (Accessed April 2017).

⁴⁴ Interview 3.

⁴⁵ «Про допуск до експлуатації в Збройних силах України автомобіля санітарного Богдан 2251 на шасі Great Wall Wingle 5», Наказ Міністерства оборони України №180 від 27.03.2017 р.: <http://bit.ly/2wmo7Pc> (Accessed April 2017).

⁴⁶ Interview 4

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Interview 2.

An interviewee also noted that there are obstacles in Ukrainian legislation, which limit the MOD's ability to procure from abroad. The interviewee suggested that the purchase could have been made by buying from a distributor in Ukraine, but information of whether this option was considered is not available⁵⁰.

Allegations of conflicts of interest. Oleg Hladkovsky is the First Deputy Secretary of the National Security and Defence Council of Ukraine (NSDC)⁵¹. In 2009, Hladkovsky (under the name Oleh Svydnarchuk – he changed his surname to Hladkovskyi in 2014⁵²) officially bought the controlling stock in Bogdan Corporation from Petro Poroshenko⁵³. This is also mentioned in his declaration of assets⁵⁴.

Between July 2012 and February 2015, Hladkovsky became the President of Bogdan Corporation. In August 2014, President Poroshenko appointed Hladkovskyi, his former business partner, as Chairman of the Interdepartmental Commission for Military-Technical Cooperation Policy and Export Control.

There is no evidence that Hladkovsky influenced the decision to purchase these Bogdans, or that Ukraine had an alternative choice that would have been preferable. But it raises issues of appearance of the conflicts of interest when a corporation – in which the controlling stock is held by the First Deputy Secretary of NSDC, a body charged with governing the defence sector of Ukraine – is a main supplier to the MOD.

Failure to prevent and sanction corrupt suppliers

In addition to the corruption risks identified in the three cases above, interviewees indicated a challenge that arises across the board: despite some progress in reform, corrupt companies are still slipping through the net.

Interviewees indicated that despite improvements in procedures, violations are still occurring, and many cases are identified once a procurement contract has been completed. For example, despite the increased audit function at the territorial level, and the requirement that auditors sign-off on bids before they proceed, one interviewee stated that in his experience, violations are only being identified after procurement has been conducted⁵⁵.

And once there is evidence of corruption against companies, it is difficult to prevent them from bidding and winning new contracts. Individuals who have been prosecuted for corrupt activities are put in a register, which, in theory, restricts them and the companies they represent from participating in tenders. According to Article 17 of the Public Procurement Law, the government is required to reject tenders from participants, which are included on the Unified State Register of Perpetrators of Corruption or Corruption-related Offences. But judicial corruption is a significant problem in Ukraine,

⁵⁰ Interview 9.

⁵¹ Рада національної безпеки і оборони України. Гладковський Олег Володимирович: <http://bit.ly/2vHJ0IX> (Accessed May 2017).

⁵² Перший заступник секретаря РНБО Олег Свинарчук (Гладковський) має офшор, пов'язаний із порошенківською корпорацією «Богдан», НАЦІОНАЛЬНЕ БЮРО РОЗСЛІДУВАНЬ УКРАЇНИ, 13 травня 2016, <http://bit.ly/2wGXyHd> (Accessed May 2017).

⁵³ Олексій Братущак. Олег Гладковський: Я не є "смотрящим" Порошенка, УКРАЇНСЬКА ПРАВДА, 16 грудня 2016 року: <http://bit.ly/2xvniint> (Accessed May 2017).

⁵⁴ Гладковський Олег Володимирович: <http://bit.ly/2vHoy4C> (Accessed May 2017).

⁵⁵ Interview 9.

meaning that not all those for who there is evidence of corruption are prosecuted and placed the register, so they are able to continue participating in tenders⁵⁶.

CONSOLIDATED RISKS & RECOMMENDATIONS

The above cases indicate the following risks, and lead the NAKO to provide following recommendations:

Risks identified in Case 1: The procurement of medicine

- **The Process of Tendering.** Our research indicated that when “lots”⁵⁷ are formed, procurement officials can manipulate the tender process by creating lots that favour a certain supplier. This can happen by, for example, including one item in a lot that only a single supplier can provide.
- **The Sanctioning of Companies.** Companies involved in corruption are not effectively sanctioned. According to Article 17 of the Public Procurement Law, the government is required to reject tenders from participants that are included on the Unified State Register of Perpetrators of Corruption or Corruption-related Offences. On the positive side, individuals that have been prosecuted for corrupt activities are put in a register, which restricts them, and the companies they represent, from participating in tenders. However, judicial corruption is a significant problem in Ukraine and can have a knock-on effect on defence procurement:⁵⁸ not all participants for which there is evidence of corruption are prosecuted and placed the register, so in practice, they are able to continue taking part in tenders.
- **Decentralization of Procurement.** Although there have been benefits to the decentralization of procurement, interviewees reported that it has not precluded corruption as much as was hoped. Many of the corruption risks that occurred in a strictly centralised procurement system have been carried over into a decentralised model, but decentralization has also made oversight more dispersed and complicated.

Recommendations:

- The MoD should introduce additional principles on the formation of lots in order to reduce the risk of manipulations at this stage. The current coding system provides some detail, but greater detail, such as structuring products according to the type of medicine being procured, should be provided.
- To make it more difficult for corrupt suppliers to participate in tenders, the MOD should take steps to sanction those that do not fulfil their contractual requirements. This should include:
 - Use guarantees of contract fulfillment, which are provided for under Article 26 Public Procurement law. The mechanism of such a guarantee is that the supplier that wins a tender is required to put a deposit into the Ministry’s account. Only when the contract has been completed in full will the MOD return this money to the supplier. If the terms

⁵⁶ In the 2013 Global Corruption Barometer, 87% of Ukrainians reported that they believed the judicial system to be corrupt or extremely corrupt Global Corruption Barometer, Transparency International, 2013, viewed 9th July, 2015: <http://bit.ly/2goeCLG> (Accessed May 2017).

⁵⁷ “Lots” are the group of goods that will be purchased in a single procurement contract.

⁵⁸ In the 2013 Global Corruption Barometer, 87% of Ukrainians reported that they believed the judicial system to be corrupt or extremely corrupt Global Corruption Barometer, Transparency International, 2013, viewed 9th July, 2015: <http://bit.ly/2goeCLG> (Accessed May 2017).

and conditions of the contract are violated by the supplier, the deposit is retained by the Ministry, and is transferred to the appropriate MOD budget. This mechanism can help reduce the risk of non-fulfillment of contracts, and of unreasonable price increases after the contract is concluded.

- The MoD should make companies legally liable for failing to fulfil a contract in full and on time, in accordance with Article 549 of Ukrainian Civil Code.
- The MMD should reconsider the total decentralization of the procurement and consider introducing a mixed system of centralised and decentralised procurements.

Risks identified in Case 2: procurement of tourniquets

- **Quality of Technical Requirements.** Technical requirements for the procurement of medical items are not always of the necessary quality or sufficiently detailed, which may influence the quality of procured goods and allow procurement contracts to favour a certain supplier.
- **Feedback Mechanism.** There is no feedback mechanism through which end-users of the products – such as military personnel and trainers—can provide input based on their experience of using the procured items, and which can then be incorporated for the improvement of the technical requirements

Recommendations:

- The Military Medical Department (MMD) within the MOD should ensure that technical requirements for a procurement of medical items are of a high quality, to help assure that procured goods are appropriate for the military's needs. This should include drawing on the input of those using the supplies in the field, volunteers and civil society organizations, and other external experts.
- The MOD should establish a feedback mechanism to provide the opportunity for end users to report on the quality of medical supplies procured. This is necessary to obtain information from end-users (doctors, trainers, military personnel) about the quality of products.

Risks identified in case 3: procurement of evacuation transport vehicles

- **Excessive Secrecy in the State Defence Order⁵⁹.** The excessive secrecy in the State Defence Order prevents effective oversight of defence procurement, leaving room for manipulation. The State Defence Order is used to procure some items relevant to medical supply, such as evacuation transport vehicles.
- **Conflicts of interest.** Conflicts of interest influencing procurement decisions, or the perception that they do, may prevent potential producers from participating in bids, which results in a decreased competitiveness in the market.

Recommendations:

⁵⁹ The State Defence Order is the primary defence procurement plan, the majority of which is classified. It includes research & development, procurement of already-approved goods and services by defence agencies, repair, and the increase or creation of new defence facilities.

- The Ukrainian government should reduce secrecy around procurement. As a first step, the Rada should review existing legislation, guidance and practice to assess whether it is in line with NATO state standards and the Global Principles on National Security and the Right to Information (the Tshwane Principles).
- The MOD should develop and implement policies for reducing and regulating conflicts of interest. This should include:
 - Officials and officers should be prohibited from performing official work on any matter where a person, family or close relationship is liable to raise doubts about their impartiality.
 - Officials and officers should be prohibited from having any financial interest or involvement in organisations relevant to their defence work.
 - The MOD should develop and monitor clear guidance for officials so that they can judge whether a conflict exists. NAKO stands ready to participate in the process of the development of the main principles.
 - Officials should be required to disclose potential conflicts of interest.
 - A clear procedure should be in place to resolve conflicts of interest. There should be a defined chain of command, details on documentation to be completed and a timeframe within which officials are obliged to act⁶⁰. NAKO stands ready to assist in developing the main principles based on international experience.
- The MOD should ensure that security assistance requests are aligned with procurement plans, so that where donors may be able to fill a capability gap – such as evacuation transport – that possibility is considered along with procurement.

⁶⁰ *Codes of Conduct in Defence Ministries and Armed Forces. What makes a good Code of Conduct? A multi-country study*, Transparency International UK, травень 2011: <http://bit.ly/2x28sHl> (Accessed May 2017).

ANNEXE: INTERVIEWEES

Interview 1: Ukrainian volunteers, Kyiv, March 2017

Interview 2: International expert , Kyiv, April 2017

Interview 3: Member of Parliament, Kyiv, by phone, April 2017

Interview 4: Journalist, Kyiv, April 2017

Interview 5: Expert 1, April 2017

Interview 6: Officer, Minister of Defence, Kyiv, April 2017

Interview 7: Officer, Minister of Defence, Kyiv, March 2017

Interview 8: Advisor, Minister of Defence, Kyiv, April 2017

Interview 9: Expert 2, April 2017

Незалежний антикорупційний комітет з питань оборони /
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